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The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

Paper No. 27

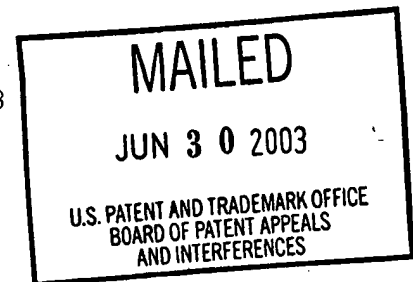
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARK E. FAGAN, SUSAN N. BOHLKE
and NEIL A. RANDEN

Appeal No. 2003-0973
Application No. 09/185,208

ON BRIEF



Before KIMLIN, OWENS and PAWLIKOWSKI, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-14, all the claims in the present application. Claim 1 is illustrative:

1. A coated article having a textured film backing with a top surface and a bottom surface, and on the top surface, a layer of pattern-coated particulate filled low adhesion backsize (LAB), such that there are areas on the top surface of the textured film

Appeal No. 2003-0973
Application No. 09/185,208

backing that are coated and areas that are uncoated and the appearance of the coated and uncoated areas on a textured film backing is visually uniform.

The examiner relies upon the following references as evidence of obviousness:

Blackwell et al. (Blackwell)	5,401,547	Mar. 28, 1995
Zhu	5,608,003	Mar. 04, 1997
Butler et al. (Butler)	5,928,726	Jul. 27, 1999
		(filed Apr. 03, 1997)

Appellants' claimed invention is directed to a coated article having a textured film backing which top surface has a layer of pattern-coated particulate filled low adhesion backsize (LAB). The top surface of the textured film has areas that are coated and uncoated and has a visually uniformed appearance.

Appealed claims 1-4, 7, 8, 10-12 and 14 stand rejected under 35 U.S.C. § 103 as being unpatentable over Butler in view of Zhu. Claims 5, 6, 9 and 13 stand rejected under 35 U.S.C § 103 as being unpatentable over Butler in view of Zhu and Blackwell.

Appellants submit at page 3 of the brief that "[t]he appealed claims will stand or fall together." Accordingly, all the appealed claims stand or fall together with claim 1, and we will limit our consideration to the examiner's rejection of claim 1.

We have thoroughly reviewed each of appellants' arguments for patentability. However, we are in agreement with the

Appeal No. 2003-0973
Application No. 09/185,208

examiner that claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of Section 103 in view of the applied prior art. Accordingly, we will sustain the examiner's rejections.

Butler, like appellants, teaches a coated article comprising a textured substrate (column 6, line 28) having a layer of low adhesion backsize (LAB) on its surface wherein the LAB is pattern-coated and includes silica particulate filler. Although Butler does not expressly disclose that there are coated and uncoated areas of LAB, we agree with the examiner that it is reasonable to conclude that the LAB of Butler, at least in the microscopic sense, comprises coated and uncoated areas. The photomicrographs of Butler, and disclosure that the patterns can result in a partial coating characteristic, support the conclusion that the microscopic pattern of Butler comprises coated and uncoated areas (see column 8, lines 24-27). Significantly, appellants, who share the same assignee as Butler, do not dispute that Butler's microscopic coating comprises coated and uncoated areas but, rather, contend that Butler does not "describe how to coat a film with an LAB, such that the film has the appearance of a uniform film, that is the viewer is unable to distinguish between the coated and uncoated macroscopic portions

Appeal No. 2003-0973
Application No. 09/185,208

of the film" (page 4 of brief, penultimate paragraph, emphasis added). As noted by the examiner, claim 1 on appeal is not limited to macroscopic areas of coated and uncoated LAB. Claim 1 is sufficiently broad to encompass microscopic areas that are coated and uncoated.

As for the claim requirement that the appearance of the coated and uncoated areas "is visually uniforme", appellants have not denied the examiner's finding that appellants have acknowledged that the patterned coating of Butler "would be 'visually uniform' anyway" (page 3 of answer, second paragraph). Indeed, appellants' argument that "what Butler is creating is a microscopic pattern, which is difficult to see" would seem to be a concession by appellants that the microscopic pattern of Butler lends an appearance of visual uniformity.

Accordingly, we find that the subject matter defined by claim 1 would have been obvious over Butler alone. Concerning separately rejected claims 5, 6, 9 and 13, appellants offer no argument other than Blackwell does not remedy the deficiencies of Butler and Zhu.

We further note that appellants base no arguments upon objective evidence of non-obviouness, such as unexpected results, nor have appellants proffered any objective evidence which

Appeal No. 2003-0973
Application No. 09/185,208

establishes that coated articles within the scope of appealed claim 1 are, in fact, patentably distinct from coated articles fairly taught by Butler.

One final point remains. In the event of further prosecution of the subject matter at bar, such as by way of a continuing application, appellants should make of record the distinction between the articles of the present invention and those discussed at page 1 of the specification under the heading of Background of Invention.

In conclusion, based on the foregoing, the examiner's decision rejecting the appealed claims is affirmed.

§ 1.136(a).

Affirmed

Edward (Karl)

Terry J. Owens
TERRY J. OWENS

Beverly A Lawrence

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Appeal No. 2003-0973
Application No. 09/185,208

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